

marketable retail orders. To the extent that the Program may raise Manning and best execution issues for broker-dealers, these issues are already presented by the existing practices of OTC market makers.

The exemption being granted today is limited to a one-year pilot. The Exchange has stated that “sub-penny trading and pricing could potentially result in undesirable market behavior,” and, therefore, it will “monitor the Program in an effort to identify and address any such behavior.”⁴¹ Furthermore, the Exchange has represented that it “will produce data throughout the pilot, which will include statistics about participation, the frequency and level of price improvement provided by the Program, and any effects on the broader market structure.”⁴² The Commission expects to review the data and observations of the Exchange before determining whether and, if so, how to extend the exemption from the Sub-Penny Rule.⁴³

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴⁴ that the proposed rule change (SR-NASDAQ-2012-129) be, and hereby is, approved on a one-year pilot basis.

It is also hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is given a limited exemption from Rule 612 of Regulation NMS allowing it to accept and rank orders priced equal to or greater than \$1.00 per share in increments of \$0.001, in the manner described in the proposed rule change above, on a one-year pilot basis coterminous with the effectiveness of the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Kevin O’Neill,

Deputy Secretary.

[FR Doc. 2013-04096 Filed 2-21-13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68941; File No. SR-CBOE-2013-022]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Stock Exchange Fees Schedule

February 15, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 12, 2013, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule of its CBOE Stock Exchange (“CBSX”). The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

other markets, might impact the use of the Program. Market distortions could arise where the size of a transaction rebate, whether for providing or taking liquidity, is greater than the size of the minimum increment permitted by the Program (\$0.001 per share).

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make a number of changes to the CBSX Fees Schedule. First, the Exchange proposes to amend the reference in Section 10 of the CBSX Fees Schedule to CBOE*direct* to refer to CBOE Command, as the manner through which CBSX Traders connect to the CBSX System is now called CBOE Command.

Second, CBSX proposes eliminate the distinction between Sponsored Users and non-Sponsored Users as they relate to CBOE Command Connectivity Charges. Currently, Sponsored Users are charged twice the regular monthly fees for such charges, with the types and amounts of such fees described in the chart below:

Description	Regular monthly fee	Sponsored user monthly fee
Network Access Port (1 Gbps)	\$250	\$500
Network Access Port (10 Gbps)	1,000	2,000
Network Access Port (Disaster Recovery)	250	500
CMI Login ID	100	200
FIX Login ID	100	200

Going forward, the Exchange proposes to assess to Sponsored Users and all other non-Trading Permit Holders the same CBOE Command Connectivity Charges as are assessed to Trading Permit Holders (“TPHs”), and to state that all such fees apply to non-TPHs as well as TPHs. The purpose of the proposed change is to simplify the Exchange’s fees structure for connectivity to the Exchange and have a standard set of connectivity fees that apply to both TPHs and non-TPHs.

CBSX also proposes to amend the manner in which it determines which fee tiers apply for Maker transactions in securities priced \$1 or greater. Currently, fees for such transactions are assessed depending on the amount of shares of liquidity that a Maker adds in one day, with the fee amount lowering based on a Maker adding higher levels of liquidity in one day. The current tiers

⁴¹ See Request for Sub-Penny Rule Exemption, *supra* note 6, at 3, n.6.

⁴² See *supra* note 28 and accompanying text.

⁴³ In particular, the Commission expects the Exchange to observe how maker/taker transaction charges, whether imposed by the Exchange or by

⁴⁴ 15 U.S.C. 78s(b)(2).

⁴⁵ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(83).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

and fees for such transactions are as follows:

Execution type	Rate
Maker (adds 4,999,999 shares or less of liquidity in one day)	\$0.0018 per share.
Maker (adds 5,000,000–9,999,999 shares of liquidity in one day)	\$0.0017 per share.
Maker (adds 10,000,000–14,999,999 shares of liquidity in one day)	\$0.0016 per share.
Maker (adds 15,000,000–24,999,999 shares of liquidity in one day)	\$0.0015 per share.
Maker (adds 25 million shares or more of liquidity in one day)	\$0.0014 per share.

CBSX proposes to cease determining such rates using nominal volume thresholds. Instead, CBSX proposes to use relative thresholds by calculating a

CBSX Trader's per-share Maker fees, using the Maker's percentage of total consolidated volume (calculated as the volume reported by all exchanges and

trade reporting facilities to a consolidated transaction reporting plan ("TCV"). As such, the proposed tiers and fees are as follows:

Execution type	Rate
Maker (adds less than 0.08% of TCV of liquidity in one day)	\$0.0018 per share.
Maker (adds at least 0.08% but less than 0.16% of TCV of liquidity in one day)	\$0.0017 per share.
Maker (adds at least 0.16% but less than 0.24% of TCV of liquidity in one day)	\$0.0016 per share.
Maker (adds at least 0.24% but less than 0.42% of TCV of liquidity in one day)	\$0.0015 per share.
Maker (adds 0.42% or more of TCV of liquidity in one day)	\$0.0014 per share.

The current nominal "amount of shares" thresholds and proposed "percentage of TCV" thresholds are intended to correspond (i.e. 4,999,999 shares or less of liquidity generally corresponds with .08% of TCV, etc., based on current TCV levels), and CBSX does not propose to change the amounts of the per-share rates at each tier. The purpose of the change to move away from basing the fee tiers on nominal shares per day to a relative percentage of TCV is to control and account for changes in national industry-wide volume.

To correspond with this proposed change, CBSX proposes to adopt the definition of "TCV" (as defined above) as Footnote 5 to Section 2 of the CBSX Fees Schedule. CBSX also proposes to amend Footnote 1 to Section 2 to account for the use of percentage of TCV to determine per-share fees for Maker transactions in securities priced \$1 or greater. The proposed new Footnote 1 will read: "These rates apply to all transactions in securities priced \$1 or greater made by the same market participant in any day in which such participant adds (for Makers) or removes (for Takers) the established amount of shares (or percentage of TCV, as applicable) or more of liquidity that is determined in the chart above for each tier. Market participants who share a trading acronym or MPID may aggregate their trading activity for purposes of these rates. Qualification for these rates will require that a market participant appropriately indicate his trading acronym and/or MPID in the appropriate field on the order."

CBSX also proposes to make two other changes to its Fees Schedule. First, in the "Execution Type" column of the first Maker fee tier listed in Section 2, CBSX proposes to move an end-parentheses so that footnotes referenced in that area are all outside of the parentheses, as such footnotes are in all other boxes in the "Execution Type" column.

Second, CBSX proposes to delete Section 3 ("Market Data") from its Fees Schedule. Section 3 currently states: "Market Data Infrastructure Fee: This fee is charged monthly to participants who receive market data from a third party market data vendor through CBSX's market data infrastructure. The Exchange will pass-through to participants receiving the data the total costs incurred by the Exchange to provide the market data infrastructure. The amount of the fee is equal to the Exchange's total costs divided by the number of participants receiving the data. Due to certain fixed costs incurred by the Exchange, each participant receiving the data as of February 15, 2010 will be obligated to pay the fee through June 30, 2010, even if such participant terminates its receipt of the data prior to June 30, 2010."

CBSX no longer provides the service being described in Section 3, meaning that CBSX market participants can no longer receive CBSX-related market data from a third party market data vendor through CBSX's market data infrastructure. As such, CBSX proposes to delete Section 3 from its Fees Schedule. In conjunction with this deletion, each of Sections 4–8 will now

be renumbered as Sections 3–7, respectively.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.³ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁴ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Eliminating, for the purpose of CBOE Command Connectivity Charges, the distinction between Sponsored Users and stating that these fees apply to both TPHs and non-TPHs is reasonable because it will allow Sponsored Users and other non-TPHs to pay half the amount that Sponsored Users are currently assessed for such fees and ensure that TPHs and non-TPHs pay the same amounts in connectivity fees. The proposed change is equitable and not unfairly discriminatory because it will allow Sponsored Users and non-TPHs to be assessed the same amounts as TPHs.

The Exchange believes that converting the qualification for the different fee tiers for Maker transactions in securities priced \$1 or greater from measuring by nominal amount of shares to measuring by relative percentage of TCV is reasonable because it allows CBSX to control and account for changes in

³ 15 U.S.C. 78ff(b).

⁴ 15 U.S.C. 78ff(b)(4).

national industry-wide volume. The Exchange believes that the change is equitable and not unfairly discriminatory because it will be applied to all CBSX Traders. The change merely switches out the measuring stick to use one that accounts for changes in industry-wide volume. Further, other exchanges also measure volume using percentage of TCV.⁵

The Exchange believes that (1) Amending the reference in Section 10 of the CBSX Fees Schedule to CBOE *direct* to accurately refer to CBOE Command, (2) moving the end-parentheses in the first Maker row of the "Execution Type" column of Section 2 of the CBSX Fees Schedule, (3) deleting Section 3 from the CBSX Fees Schedule, and correspondingly (4) re-numbering each of Sections 4–8 as Sections 3–7, respectively, are all consistent with the Section 6(b)(5)⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Providing the correct reference to the manner through which CBSX Traders connect to the CBSX System, placing the footnotes in consistent places in Section 2, deleting a Section that refers to a service which is no longer provided by CBSX, and re-numbering the following sections on the CBSX Fees Schedule due to that deletion, will all serve to eliminate any potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBSX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Eliminating, for the purpose of CBOE Command Connectivity Charges, the distinction between Sponsored Users and stating that these fees apply to both TPHs and non-TPHs will relieve any possible

burden on intramarket competition because it will ensure that TPHs and non-TPHs will be paying the same fee amounts. The Exchange believes that the proposed change will not impose any burden on intermarket competition, or have an impact on intermarket competition, because the proposed changes apply merely to connections to CBSX, and each exchange has different manners and structures for connectivity. Further, to the extent that the elimination of separate higher fees for Sponsored Users and the statement that the regular fees apply to both TPHs and non-TPHs could attract market participants connecting to other exchanges to connect to CBSX, market participants trading on other exchanges can always elect to do so.

The Exchange believes that converting the qualification for the different fee tiers for Maker transactions in securities priced \$1 or greater from measuring by nominal amount of shares to measuring by relative percentage of TCV will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe this change imposes a significant burden on intramarket competition, as it applies to all CBSX Traders. The Exchange does not believe this change impose [sic] a significant burden on intermarket competition because it will put CBSX on an more even competitive footing with other exchanges that already use percentage of TCV to determine fees.⁷

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and paragraph (f) of Rule 19b–4⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–CBOE–2013–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–022, and should be submitted on or before March 15, 2013.

⁵ See BATS Exchange, Inc. ("BATS") Fee Schedule, section on Equities Pricing.

⁶ 15 U.S.C. 78f(b)(5).

⁷ See BATS Fee Schedule, section on Equities Pricing.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68942; File No. SR-FINRA-2013-015]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section 4 of Schedule A to the FINRA By-Laws To Adopt a Waiver Process for the Continuing Membership Application Fee and Amend NASD Rules 1013 and 1017 To Provide for a Refund of the Application Fee for the Withdrawal of a New Member or Continuing Membership Application

February 15, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 5, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Section 4 of Schedule A to the FINRA By-Laws to adopt a waiver process for the continuing membership application fee where FINRA determines that the application is proposing less significant changes that do not require substantial staff review. The proposed rule change also would amend NASD Rules 1013 (New Member Application and Interview) and 1017 (Application for

Approval of Change in Ownership, Control, or Business Operations) to provide for a refund of the application fee (less a \$500 processing fee) if a new member applicant or continuing membership applicant withdraws an application within 30 days after filing the application.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective July 23, 2012, FINRA amended Section 4 of Schedule A to its By-Laws to, among other things, assess a new fee for continuing membership applications ("CMAs").⁴ In light of comments raised on the CMA fee, FINRA proposes to amend Section 4 of Schedule A to the FINRA By-Laws to adopt a waiver process for the CMA fee where FINRA determines that the CMA is proposing less significant changes that do not require substantial staff review.⁵ The proposed rule change also would amend NASD Rules 1013 (New Member Application and Interview) and 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) to refund the requisite application fee (less \$500,

which shall be retained by FINRA as a processing fee) if an applicant withdraws a new membership application ("NMA") or CMA within 30 days after filing the application.

CMA Fee Waiver

NASD Rule 1017 provides parameters for changes in a member's ownership, control, or business operations that would require a CMA,⁶ and NASD Rule 1012 (General Provisions) requires an applicant filing a CMA to submit an application fee pursuant to Schedule A to the FINRA By-Laws. Section 4(i) of Schedule A to the FINRA By-Laws assesses applicants a CMA fee ranging from \$5,000 to \$100,000 depending on the number of registered persons associated (or to be associated) with the applicant and the type of change in ownership, control, or business operations being contemplated (merger, material change, ownership change, transfer of assets, or acquisition). For instance, the fee structure assesses a member with only one to ten registered persons a fee ranging between \$5,000 and \$7,500, depending on the type of CMA, whereas a member with 301 to 500 registered persons is assessed a fee ranging between \$10,000 and \$30,000 depending on the type of CMA. This tiered fee structure recognizes that more complex changes and larger applicants generally require additional staff resources.

The proposed rule change would provide FINRA with flexibility to grant a waiver of the CMA fee for those applications that propose less significant changes to a member firm's

⁶ NASD Rule 1017(a) (Events Requiring an Application) requires a member to file an application for approval of any of the following changes to its ownership, control, or business operations: (1) A merger of the member with another member, unless both are members of the NYSE or the surviving entity will continue to be a member of the NYSE; (2) a direct or indirect acquisition by the member of another member, unless the acquiring member is a member of the NYSE; (3) direct or indirect acquisitions or transfers of 25 percent or more in the aggregate of the member's assets, or any asset, business, or line of operation that generates revenues comprising 25 percent or more in the aggregate of the member's earnings measured on a rolling 36-month basis, unless both the seller and the acquirer are members of the NYSE; (4) a change in the equity ownership or partnership capital of the member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital; or (5) a material change in business operations as defined in NASD Rule 1011(k) (Material Change in Business Operations). NASD Rule 1011(k) defines a "material change in business operations" as including, but not limited to: (1) Removing or modifying a membership agreement restriction; (2) market making, underwriting, or acting as a dealer for the first time; and (3) adding business activities that require a higher minimum net capital under SEA [sic] Rule 15c3-1.

⁴ See Securities Exchange Act Release No. 67240 (June 22, 2012), 77 FR 38694 (June 28, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2012-031). On July 23, 2012, FINRA also made available a new Form CMA for optional use by continuing membership applicants; applicants were required to use Form CMA effective August 27, 2012. See Securities Exchange Act Release No. 67484 (July 23, 2012), 77 FR 44298 (July 27, 2012) (Notice of Filing and Immediate Effectiveness of SR-FINRA-2012-036).

⁵ See also Letter from Philip Shaikun, Associate Vice President and Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, SEC, dated August 3, 2012, in response to comments on SR-FINRA-2012-031 (indicating FINRA's intent to consider a waiver program for the CMA fee).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).